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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,450	01/14/2002	Rogers C. Ritter	5236-000296	1076

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EXAMINER
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JUNG, WILLIAM C

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

82

<b>Office Action Summary</b>	<b>Application No.</b> 10/047,450	<b>Applicant(s)</b> RITTER ET AL.	
	<b>Examiner</b> William Jung	<b>Art Unit</b> 3737	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed January 3, 2005 have been fully considered but they are not persuasive. The applicant's argument on remarks page 7 points out that neither Acker nor Ferre et al disclose that the reference catheter is positioned within the body. However, Ferre et al disclose that the sensor and the reference coil as shown in figure 32 are placed within a body (col. 13, lines 49-58), therefore, the combination of Ferre et al and Acker fully meets all claimed features in claims 20, 24, 35, and 40. In addition, since Ferre et al explicitly state that the reference sensor is placed in the body, the obvious motivation is met.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 20-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Acker* (US 5,729,129) in view of *Ferre et al* (US 5,873,822).

Acker substantially discloses all claimed features in claims 20-48. Acker discloses a method where a medical device with three component sensors 20, 22, and 24 (figure 2) coupled with transmit coils 120, 122, and 124 (figure 6). The received signals from the sensors are then processed to determine the position of the medical device (col.1, lines 31-51; col. 2, line 60- col. 3, line 41; col. 5, lines 27-38; col. 13, lines 8-19). However, Acker does not specifically disclose

the manner in which the transmitted signals are obtained via reference catheter. Ferre et al disclose Acker's deficiencies as follows;

**Claims 20, 24, 35, and 40:** Ferre et al disclose a method of localizing a position of a medical device in a patient's body during a medical procedure where a reference catheter 36 is secured near the patient's surgical site and introducing the medical device into the patient's body (figures 1-4; col. 2, lines 17- 58; col. 3, line 65 –col. 4, line 61). The received data 26 is stored and registered 24 to determine the position 22 of the medical device in the patient (figure 14; col. 6, line 49 – col. 7, line 65).

**Claims 21-23, 25-29, 36-39 and 41-44:** Ferre et al further disclose that the reference catheter both transmits and receive signals. Thus, Acker's transmitted signals can received as well as transmit signal to Acker's device (col. 4, lines 26-44).

**Claims 30-34 and 45-48:** Acker's sensors transmit different frequencies of AC magnetic field to indicate or localize the position of the device within a body.

Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to apply the teachings of Ferre et al's reference catheter fixed onto the patient near the surgical procedure to track the position of the medical device to improve Acker's position sensor device.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 3737

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Jung, Ph.D. whose telephone number is 571-272-4739. The examiner can normally be reached on Mon-Fri 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WJ  
March 21, 2005

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700